

1 Kenneth A. Gallo (admitted pro hac vice)
KGallo@paulweiss.com
2 Craig A. Benson (admitted pro hac vice)
CBenson@paulweiss.com
3 PAUL, WEISS, RIFKIND, WHARTON &
4 GARRISON LLP
2001 K Street, NW
5 Washington, DC 20006-1047
Tel: (202) 223-7300
6 Fax: (202) 223-7420

7 Stephen E. Taylor (SBN 58452)
8 Cheryl A. Cauley (SBN 252262)
TAYLOR & PATCHEN, LLP
9 One Ferry Building, Suite 355
San Francisco, California 94111
10 Telephone: (415) 788-8200
Facsimile: (415) 788-8208

11 Attorneys for Defendant
12 MASTERCARD INTERNATIONAL
13 INCORPORATED

14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
15 **SAN FRANCISCO DIVISION**

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18 B & R SUPERMARKET, INC., d/b/a
MILAM'S MARKET, ET AL.,

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20 Plaintiffs,

21 vs.

22 VISA, INC. ET AL.,

23 Defendants.
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Case No. 3:16-cv-01150-WHA

**ADMINISTRATIVE MOTION FOR
AN ORDER ISSUING LETTER
ROGATORY AND APPOINTING
A COMMISSIONER PURSUANT
TO 28 U.S.C. § 1781 AND THE
HAGUE CONVENTION**

Honorable William H. Alsup

25 Pursuant to Local Rule 7-11, Defendants Visa, Inc., Visa USA, Inc. (together, "Visa"),
26 Mastercard International Incorporated ("Mastercard"), and American Express Company
27 ("American Express") (collectively, "Defendants"), upon the accompanying declarations and
28

1 exhibits attached hereto, move this Court for an Order pursuant to 28 U.S.C. § 1781, and Chapter
 2 II of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters,
 3 23 U.S.T. 2555 (the “Hague Convention”), (1) issuing a Letter of Request for International
 4 Judicial Assistance directed to the Ministère de la Justice Ministère de la Justice, Direction des
 5 Affaires Civiles et du Sceau, Bureau du droit de l'Union, du droit international privé et de
 6 l'entraide civile (BDIP), 13, Place Vendôme, 75042 Paris Cedex 01, France (the “Ministère de la
 7 Justice”), (2) appointing a Commissioner pursuant to Article 17 of the Hague Convention, and
 8 (3) directing submission of the Order and Letter of Request to the Ministère de la Justice, for the
 9 purpose of obtaining documents and information from FIME, Inc., which is located in Antony,
 10 France. As of the date of this filing, Plaintiffs have not taken a position on this Motion.

11 B&R Supermarket, Inc., Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur
 12 Marcel), Palero Food Corp., and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket)
 13 (collectively “Plaintiffs”) allege in their Amended Complaint, inter alia, that, in facilitating the
 14 United States roll-out of advanced “chip” technology, Visa Inc., Visa USA Inc., Mastercard
 15 International Incorporated, American Express Company, and Discover Financial Services
 16 violated antitrust and consumer protection laws by, in part, conspiring to control the process by
 17 which merchants received certification for their EMV terminals in order to prevent merchants
 18 from successfully completing certification prior to October 2015.

19 FIME USA Inc. is a service provider that plays an important role in the certification
 20 process by testing terminals and reviewing terminal test logs or scripts to determine whether a
 21 given terminal may be certified as compliant with EMV chip technology. FIME USA Inc. is part
 22 of FIME’s global network of companies and offices headquartered in Antony, France. FIME has
 23 in its possession, custody, or control relevant documents that are located in France and may be
 24 material and necessary to the just determination of the issues in this action, as described in the
 25 Subpoena Duces Tecum that Defendant Mastercard International Incorporated (“Mastercard”)
 26 served FIME with on December 16, 2016.

27 Because FIME is a resident of the French Republic, it cannot be compelled by a
 28 disclosure request pursuant to the Federal Rules of Civil Procedure to produce documents that

1 are located in France. FIME is ready, however, to cooperate and voluntarily produce documents
2 pursuant to the Subpoena, agrees to the appointment of a commissioner, and is not raising the
3 Hague Convention for purposes of delay, as set out in the Declaration of Alexander Blumrosen,
4 counsel for FIME. In an effort to expedite FIME's ability to produce responsive documents
5 located in France, FIME and the Defendants have agreed to use the consensual procedure
6 provided in Chapter II of the Hague Convention of 18 March 1970 on the Taking of Evidence
7 Abroad in Civil or Commercial Matters (the "Hague Convention"), which requires the
8 appointment of a commissioner (with the ultimate approval of the French Ministère de la Justice)
9 to receive from FIME documents located in France and simultaneously transmit the documents
10 to counsel for Defendants pursuant to Article 17 of the Hague Convention. Defendants have
11 agreed to the appointment of Nathalie Meyer Fabre (partner at Meyer Fabre Advocats, 53 avenue
12 de Breteuil, 75007 Paris, France, Tel: +33 1 44 38 72 32, Email:
13 nmeyerfabre@meyerfabre.com), who has advised FIME and the Defendants that she is willing to
14 serve as a commissioner in this matter, if appointed, to receive from FIME responsive documents
15 located in France and simultaneously transmit the documents to counsel for Defendants pursuant
16 to Article 17 of the Hague Convention.

17 Given the relevance and importance of the information at issue, Defendants respectfully
18 request that this motion for an order issuing a letter rogatory and appointing a commissioner be
19 granted. Attached to this motion are: a Letter of Request for International Judicial Assistance
20 (**Exhibit 1**); the Subpoena Duces Tecum that Defendant Mastercard served upon FIME USA Inc.
21 on December 16, 2016 (**Exhibit 2**); Declaration of William Y. Durbin in support of Defendants'
22 Motion for issuance of a letter of request, appointment of a commissioner and direction of
23 submission of a Hague Convention application (**Exhibit 3**); and Declaration of Alexander
24 Blumrosen, counsel for FIME, in support of the Motion for the appointment of a Commissioner
25 under the Hague Evidence Convention, attesting to FIME's willingness and readiness to produce
26 documents pursuant to an Order from this Court requesting international assistance (**Exhibit 4**).
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1 Dated: January 30, 2017

Respectfully submitted,

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3 PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

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5 By: /s/ Kenneth A. Gallo

6 Kenneth A. Gallo (admitted *pro hac vice*)
7 Craig A. Benson (admitted *pro hac vice*)
8 William Y. Durbin (admitted *pro hac vice*)
9 Catherine M. Yang (admitted *pro hac vice*)

10 2001 K Street, NW
11 Washington, DC 20006-1047
12 Telephone: 202.223.7300
13 Facsimile: 202.223.7420
14 KGallo@paulweiss.com
15 CBenson@paulweiss.com
16 WDurbin@paulweiss.com
17 CYang@paulweiss.com

18 Stephen E. Taylor (SBN 058452)
19 Cheryl A. Cauley (SBN 252262)
20 TAYLOR & PATCHEN, LLP
21 One Ferry Building, Suite 355
22 San Francisco, CA 94111
23 Telephone: 415.788.8200
24 Facsimile: 415.788.8208
25 staylor@taylorpatchen.com
26 ccauley@taylorpatchen.com

27 Attorneys for Defendant
28 MASTERCARD INTERNATIONAL
INCORPORATED

20 Dated: January 30, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

21 By: /s/ Robert J. Vizas

22 Robert J. Vizas
23 robert.vizas@apks.com
24 Sharon D. Mayo
25 sharon.mayo@apks.com
26 Stephanie I. Fine
27 Stephanie.fine@apks.com
28 Three Embarcadero Center, Tenth Floor
San Francisco, CA 94111-4024
Telephone: 415.471.3100
Facsimile: 415.471.3400

1 Mark R. Merley (admitted *pro hac vice*)
2 mark.merley@apks.com
3 Karen C. Otto (admitted *pro hac vice*)
4 karen.otto@apks.com
5 601 Massachusetts Avenue, NW
6 Washington, DC 20001-3743
7 Telephone: 202.942.5000
8 Facsimile: 202.942.5999

9 Attorneys for Defendants
10 VISA INC. and VISA U.S.A. INC.

11 Dated: January 30, 2017

12 CRAVATH, SWAINE & MOORE LLP

13 By: /s/ Damaris Hernandez

14 Damaris Hernández
15 Kelsie Docherty
16 Worldwide Plaza
17 825 Eighth Avenue
18 New York, NY 10019-7475
19 Telephone: 212.474.1000
20 Facsimile: 212.474.3700
21 Email: dhernandez@cravath.com
22 Email: kdocherty@cravath.com

23 Attorneys for Defendant
24 AMERICAN EXPRESS COMPANY
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27
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ATTESTATION

I, Kenneth A. Gallo, am the ECF user whose ID and password are being used to file the above MOTION FOR ISSUANCE OF LETTER OF REQUEST, APPOINTMENT OF COMMISSIONER AND DIRECTION OF SUBMISSION OF HAGUE CONVENTION APPLICATION. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each listed counsel above has concurred in this filing.

Dated: January 30, 2017

/s/ Kenneth A. Gallo